HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 1208 (S/S) 2001
(Old No. 49574/1999)

1. Vinod Prakash S/o Sri K.N. Nautiyal,
   Assistant Teacher (L.T. Grade), Govt. High School,
   Chandreshwar Sain, Tehri Garhwal,
2. Manish Vashistha S/o Sri Kamal Swaroop,
   Assistant Teacher (L.T. Grade), Govt. Inter College,
   Kaimra Kaimar, Tehri Garhwal,
3. Pratap Singh S/o Sri Jai Singh Semwal,
   Assistant Teacher (L.T. Grade), Govt. Inter College,
   Thela Nailchami, Tehri Garhwal,
4. Vijay Prasad Gaur S/o Sri Bal Krishna,
   Assistant Teacher (L.T. Grade), Govt. Inter College,
   Rajakhet, Tehri Garhwal,
5. Poorn Singh S/o Sri Udhami Singh,
   Assistant Teacher (L.T. Grade), Govt. High School,
   Siwalidhar, Tehri Garhwal,
6. Durlabh Singh S/o Sri Bachan Singh,
   Assistant Teacher (L.T. Grade), Govt. High School,
   Barhkhet, Tehri Garhwal,
7. Chandra Singh Negi S/o Sri Jodh Singh Negi,
   Assistant Teacher (L.T. Grade), Govt. Inter College,
   Kindolakhal, Tehri Garhwal,
8. Harshmani Pandey S/o Sri Shiva Nand Pandey,
   Assistant Teacher (L.T. Grade), Govt. Inter College,
   Kindolakhal, Tehri Garhwal,
9. Raju Bharti S/o Sri Ved Ram Bharti,
   Assistant Teacher (L.T. Grade), Govt. Inter College,
   Nagrajadhar, Tehri Garhwal,
10. Sumer Chandra S/o Bharat Singh,
    Assistant Teacher (L.T. Grade), Govt. Inter College,
    Raupad Ramoli, Tehri Garhwal,
11. Sohan Lal S/o Sri Mangtu Mistri,
    Assistant Teacher (L.T. Grade), Govt. High School,
    Gheradhar, Tehri Garhwal,
12. Pushpa Lal S/o Sri Shiv Mistri,
    Assistant Teacher (L.T. Grade), Govt. Inter College,
    Barethidhar, Tehri Garhwal,
13. Mahavir Prasad Semwal S/o Sri Khima Nand,
    Assistant Teacher (L.T. Grade), Govt. Inter College,
    Nagrajadhar, Tehri Garhwal,
14. Narayan Prasad S/o Sri Damodar Prasad,
    Assistant Teacher (L.T. Grade), Govt. Inter College,
    Paledhi, Tehri Garhwal,

15. Smt. Saroj Bahuguna W/o Sri Santosh Bahuguna,
Assistant Teacher (L.T. Grade), Govt. Girls High School,
Dhansali, Tehri Garhwal,
16. Narendra Lal Singh S/o Sri Beera Singh,
Assistant Teacher (L.T. Grade), Govt. Inter College,
Bhawan, Tehri Garhwal,
17. Jitendra Singh S/o Sri Jaipal Singh,
Assistant Teacher (L.T. Grade), Govt. High School,
Bangiyal, Tehri Garhwal, -- Petitioners.

Versus

1. State of U.P. through,
Secretary Education (Madhyamik) U.P. Lucknow,
2. Regional Joint Director of Education,
Garhwal Mandal Pauri, Pauri Garhwal,
3. District Inspector of Schools, Tehri Garhwal. --- Respondents.

Sri Rajendra Dobhal, learned counsel for the petitioners.
Sri Paresh Tripathi, learned Standing Counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rajendra Dobhal, learned counsel for the petitioners and Sri Paresh Tripathi, learned Standing Counsel for the respondents.

It is submitted by the learned counsel for the petitioners that in pursuance of the advertisement dated 21.10.1997, the petitioners, who were fully qualified for being considered for appointment on the post of Assistant Teacher (L.T. Grade), have submitted their application in the office of Regional Joint Director of Education, Garhwal Mandal, Pauri, who after scrutinizing the applications, placed the same before the Selection Committee. And in accordance to the list prepared by Select Committee, after awarding quality point marks to the petitioners, the respondent no. 2 issued appointment orders in favour of the petitioners on 18.11.1998. The petitioners took charge after being examined their original certificates and with

due satisfaction with the documents produced before the Principal of the respective Institutions.

It is contended that after joining of their services, the petitioners are working as Assistant Teacher in their respective Institutions. On the basis of some complaint all the appointments made by the Joint Director of Education, Garhwal Mandal, Pauri on the post of Assistant Teachers, were cancelled by the Department and after scrutiny, the persons who were rightly selected for the post, were given reappointment vide order dated 18.06.1999 and the persons who had been provided appointment illegally were left out. The petitioners were re-appointed on the posts of Assistant Teacher on 18.06.1988. The petitioners are continuing in the service, but the respondents have withheld the salaries of the petitioners from January 1999 to June 1999 and the petitioners have been treated as fresh appointees.

It was further contended that on account of some complaints the Secretary of Education State of U.P. set up inquiry against the then Joint Director of Education, Garhwal Mandal Pauri and the Secretary Education, State of Uttaranchal has directed the authority to stop payment of salaries of the teachers till the inquiry is completed. But the appointment of the petitioners could not be affected adversely on account of inquiry initiated against the Joint Director of Education.

In the writ petition no. 3160(ss)2001 Harish Chandra Paneru vs. State of Uttaranchal and other, this Court has held that the subsequent appointment of the petitioner itself indicates that the initial appointment of the petitioner was not

illegal, therefore one day's break shall be ignored for the purposes of seniority and other benefits in service.

Submission of the learned counsel for the petitioners, in nutshell, is that the respondents may be directed to make payment of salaries to the petitioners, which was withheld by them and further the respondents may be directed to ignore the artificial break of one day for the purposes of seniority and other benefits of petitioner's services.

Counsel for the petitioners has contended that the petitioners are working continuously in their respective Institutions from the day of their joining and there is no break in the service of the petitioners, as the order of termination was passed on 17.06.1999 and order of fresh appointment was passed on 18.06.1999, which itself indicate that the petitioners were given merely one day's artificial break. It has been further submitted that by withholding the salaries of the petitioners from January 1999 to June 1999, the respondents have committed illegality.

For the reasons recorded above, the writ petition is allowed. The respondents are directed to make payment of salary to the petitioners withheld by the respondents for the period since January 1999 to June 1999 and one day's break in the service shall be ignored for the purposes of seniority and other service benefits of the petitioners. No order as to costs.

(M.M. Ghildiyal, J.)

August 1, 2006:
NCM: